

## **FINANCE & ADMINISTRATION COMMITTEE MEETING**

Monday, June 18th, 2018

**6:00 p.m.**

Hampden Town Office

### **1. Meeting Minutes**

#### **a. June 4th, 2018**

### **2. Review & Sign Warrants**

### **3. Unfinished Business**

### **4. New Business**

- a.** Recommend Council authorization for the expenditure of \$15,871 from the Recreation Area Reserve account (3-767-00) for the purpose of repair to outdoor basketball courts at the VFW Drive – *requested by Recreation Director Shelley Abbott*
- b.** Recommend Council authorization for the expenditure of \$3,651 from the Recreation Area Reserve account (3-767-00) for the purpose of crack repair to the VFW tennis courts - *requested by Recreation Director Shelley Abbott*
- c.** Recommend Council authorization for the expenditure of \$1,415.85 from the IT Computer Reserve account (03-711-00) for the purpose of purchasing a Surface Pro tablet for the new town manager – *requested by IT Specialist Kyle Severance*
- d.** Discussion on the verdict of the Service Charge litigation and whether to appeal further
- e.** Recommend Council referral to public hearing for July 2, 2018, amendments to the Fees Ordinance for applications for conditional use to reflect proposed amendments to the Zoning Ordinance – *requested by Town Planner Karen Cullen*

### **5. Public Comment**

### **6. Committee Member Comments.**

### **7. Adjournment**

## FINANCE & ADMINISTRATION COMMITTEE MEETING

Monday, June 4th, 2018

### MINUTES – DRAFT

Hampden Town Office

#### Attending:

*Councilor Terry McAvoy, Chair  
Mayor Ivan McPike  
Councilor Mark Cormier  
Councilor Dennis Marble  
Councilor David Ryder  
Councilor Stephen Wilde  
Town Manager Angus Jennings  
Town Attorney Ed Bearor*

*Incoming Manager Jim Chandler  
Town Clerk Paula Scott  
DPW Director Sean Currier  
Rec Director Shelley Abbott  
Bangor Asst. City Mgr Mike Crooker  
Resident Walt Cupples  
Resident Marge Lawrence  
Residents*

*Chairman McAvoy called the meeting to order at 6:00 p.m.*

#### 1. Meeting Minutes

- a. May 21st, 2018 – There was a motion by Councilor Marble seconded by Mayor McPike to approve the minutes. Approved 6-0.*

- 2. Review & Sign Warrants – Warrants were presented and signed. Mayor McPike asked about expenditures to Nicklebeth Turf on warrants #92 and #94 totaling \$16,220 and wanted to ensure that these expenses were properly budgeted in the proposed FY19 budget, noting that the total expenses exceed the budgeted amount for grub prevention in the Buildings & Grounds budget. Manager Jennings verified that the costs had been properly budgeted for FY19, and that these invoices had been paid out of the Buildings & Grounds budget and the Rec Budget.*

- 3. Unfinished Business – None.*

#### 4. New Business

- a. Recommend Council authorization to expend funds from the Personnel Reserve Account (3-733-00) for the purpose of paying accrued vacation and a portion of accrued sick time to a departing employee – Motion by Chairman McAvoy seconded by Councilor Marble to recommend Council authorization to expend \$8,735.21 for the purpose of paying accrued vacation and a portion*

*of accrued sick time to departing employee Angus Jennings in accordance with the Town personnel policy. Motion passed 6-0.*

- b. Recommend award of the concrete work for the DPW Salt Building bid to C W Martin Concrete** – *requested by DPW Director Currier – Motion by Mayor McPike seconded by Councilor Marble to recommend Council award of the bid for concrete work at the DPW Salt Shed to C.W. Martin Concrete, with an amount not to exceed \$40,400. Motion passed 6-0.*
- c. Request for Council authorization for the expenditure of an amount not to exceed \$40,400 from the Solid Waste Reserve Account (3-777-00) for concrete work for the new DPW Salt Building** – *requested by DPW Director Currier – Manager Jennings advised that this reserve funding had been previously authorized by the Council in October 2017, so no vote is needed. The item was passed over.*
- d. Recommend award of the carpentry work for the DPW Salt Building bid to Complete Construction** – *requested by DPW Director Currier – Motion by Mayor McPike seconded by Councilor Marble to recommend Council award of the bid for carpentry work at the DPW Salt Shed to Complete Construction, with an amount not to exceed \$35,000. Motion passed 6-0.*
- e. Request for Council authorization for the expenditure of an amount not to exceed \$35,000 from the Solid Waste Reserve Account (3-777-00) for carpentry work for the new DPW Salt Building** – *requested by DPW Director Currier – Manager Jennings advised that this reserve funding had been previously authorized by the Council in October 2017, so no vote is needed. The item was passed over.*
- f. Committee review and discussion regarding the possible waiver and consent agreement with Waste Management to allow delivery of MSW to PERC for a waiver fee** – *There was discussion of the terms recently approved by the MRC Board whereby communities may choose to pay a waiver fee in order to send waste to PERC rather than to landfill during the “bridge period” prior to full operations at Fiberight. It was reported that, with the waiver fee, the per ton cost would go to \$120/ton instead of the contracted cost of \$70/ton. The Committee agreed this did not make sense to pursue. Councilor Marble said that the consequence of the extended bridge period is anti-environmental, due to landfilling, and said he hopes that MRC and Fiberight would minimize what appears to be an*

*irresponsible method of waste disposal.*

- g. Recommend Council waiver of the residency requirement for new Town Manager James Chandler** – *Motion by Councilor Marble seconded by Councilor Wilde to recommend Council waiver of the residency requirement for new Town Manager James Chandler. Mayor McPike asked what kind of timeframe? Incoming Manager Chandler said it may be next spring. Councilor Wilde said that this requirement in the Town Charter seems kind of antiquated. Motion passed 6-0.*
- h. Recommend Council referral of proposed FY19 budget to public hearing for June 18th** – *Manager Jennings said that the Council will be asked to refer a proposed budget to public hearing, and presented a series of slides summarizing the budget process to date, major topics discussed during the budget process, factors affecting FY19 costs and revenues, and summarized recommended changes he asked the Council to incorporate prior to referral. These changes included increases and decreases in various personnel line items for Administration, Police, Fire and Recreation with a net impact of adding \$9,576 to the budget; these changes were due to updates to the personnel budgeting workbook, and included applying 2% COLA to public safety. He also recommended funding The Bus for the full year at the amount initially proposed of \$106,352. He noted that a reduced local share of Bus costs may result from a process now underway in Bangor, but because any changes in the funding allocation are not yet official it is recommended to budget for the original amount. He also reported that a decision on the Service Fee litigation had been received today and was not favorable to the town, so he is recommending a reduction of \$4,430 in budgeted FY19 Service Fee revenues.*

*Councilor Ryder asked about applying COLA at 2% across the board, not just union, and Manager Jennings advised this would add about \$17,000 to the budget. Chairman McAvoy said this would be more equitable, and Councilor Marble said this would avoid staff morale issues if all parts of the organization receive the same COLA. Mayor McPike agreed. Councilor Cormier said that union members pay dues whereas non-union employees do not. There was a call for a vote and the recommendation to apply 2% COLA across the board passed 5-1 with Councilor Cormier opposed.*

*There was discussion of Schoolhouse Lane, which is proposed for complete reconstruction in the draft budget. Councilor Wilde asked if the cost of paving could be broken out so that this could be either reduced from the project budget (with paving costs coming out of the*

*paving budget for FY19) or reduced from the paving budget (with the costs paid from the street construction budget). Manager Jennings asked DPW Director to prepare an estimate of the road paving costs for inclusion in the June 18 meeting packet.*

*Resident Marge Lawrence spoke in favor of the bus, saying that it helps make Hampden a livable community. Resident Walt Cupples of 213 Canaan Road said he's lived in Hampden 30 years and it is the best of both worlds, between Hampden and Bangor. He said the bus is a critical link and we would like to see service expanded in the future, but for the current budget process would like to keep the current level of service. Marge Lawrence said that people live here who couldn't live in Hampden without the bus. People also need it if injured, and as they get older. She said it's a needed service.*

*Councilor Ryder asked about the estimated mil rate impact of the proposed budget. Manager Jennings said that an estimate would be prepared for inclusion in the June 18 meeting materials.*

*There was a motion to refer the proposed budget to public hearing, including the recommended changes discussed tonight (including funding for the bus, the 2% COLA, and the other revisions to various personnel lines). The motion passed 4-2 with Councilors Cormier and Wilde opposed.*

**5. Public Comment – None.**

**6. Committee Member Comments –** *Councilor Wilde said this has been a really tough budget season. Proposed school, County, water rate increases have contributed to a proposed \$1.3 million increase, which could have been even higher. He said that the Councilors will still be looking closely at it over the next couple of weeks.*

**7. Adjournment**

*There being no further business, the meeting was adjourned at 6:56 PM.*

Respectfully submitted –  
Angus Jennings, Town Manager



4-a  
4-b

**Recreation Department-Skehan Recreation Center**

To: Hampden Town Council Services Committee  
Town Manager Jim Chandler  
From: Recreation Director Shelley Abbott  
CC: PW Director Sean Currier  
Date: 6/4/2018  
Re: Recreation Area Reserve Account 3-767-00

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Comments: I am requesting authorization to use Recreation Area reserve account number 3-767-00 for the purpose of the following items:

Repair to Outdoor Basketball Courts (3 Courts) at VFW Drive \$15871.00

4-a

*760" of structural crack repair-includes resurfacer coat, sport coating, and line touch up in repaired areas only. Repair system being applied carries a 2 year warranty.*

*This is similar to the repair that was authorized in the summer of 2016 for repairs to the VFW Tennis Courts. At that time we had a standard crack fill done which was a temporary solution in anticipation of this more expensive repair in a few years.*

Crack repair to VFW Tennis Courts (2 Courts) at VFW Drive \$3651.00

4-b

*Rubberized crack repair for new cracks. Includes color and line touch up of repaired area. Price only good if done simultaneously with Basketball Court project.*

Warranty Repair to VFW Tennis Court (1 Court)at VFW Drive NC

**Total Request from Recreation Area Reserve Account 3-767-00 \$19522.00**

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4-a

Quality Fencing  
Residential & Commercial



(A Division of CCR Sports, Inc.)

# Proposal

P. O. Box 6 St. Johnsbury VT 05819

1-802-748-4378 1-800-237-6774

1-802-748-9974 FAX

www.vttennis.com

PROPOSAL SUBMITTED TO <b>Town of Hampden</b>		PHONE <b>207-862-6451</b>	FAX	DATE <b>6/4/2018</b>
EMAIL <b>recreation@hampdenmaine.gov</b>		JOB <b>Basketball RiteWay Repair</b>		
STREET <b>P.O. Box 219 - 106 Western Ave.</b>		JOB LOCATION <b>Hampden, ME</b>		
CITY, STATE, AND ZIP CODE <b>Hampden, ME 04444</b>		<b>18159</b>		
		<b>Three (3) Basketball Courts</b>		

We hereby submit specifications and estimates to:

**Work to be completed: Three (3) Basketball Courts Crack Repair**

- Clean entire surface with compressed air.
- Clean & fill of structural cracks with concrete fortified with E330 Acrylic Binder.
- Supply & install approx. 760' of Rite Way Crack Repair System to structural cracks on playing areas of tennis courts.
- Total crack repaired areas to receive one (1) coats of Premier Sports Resurfacer. This will fill surface voids and act as a prime coat for the color system. (Manufacture Specification.) Material manufactured by California Sports Surfaces.
- Total repaired areas to receive three (3) coats of Premier Sports Coatings. Colors to be Dk. Green and Lt Green Texture coats to contain the proper amount of sand to provide a tough wearing base. Material manufactured by California Sports Surfaces.
- Touch up lines as needed in the repaired areas only.

**VT Tennis Court Surfacing warranties cracks repaired with Rite Way Crack Repair for a period of two (2) years. Warranty covers repaired areas only. Lengthening of cracks or new cracks are not covered under this warranty**

**Price for above work a.- f. : \$15,871.00.**

**Work to be completed: Two (2) Tennis Crack Repair**

- Clean & fill structural cracks with concrete fortified with E330 Acrylic Binder.
- Fill hairline cracks with ELITE-Crack rubberized liquid crack filler.
- Clean surface area with compressed air.
- Touch up repaired cracks with appropriate colors. Color to be Lt. Green and Dk. Green, with the the understanding that the colors will not match perfectly.
- Touch up lines as needed in repaired areas only.

**Add \$3,651.00. to the pricing above.**

**Note: This price is good only if completed at the same time as Tennis court work above:**

**Note: Even though we use the most up to date materials available, cracks repaired with the standard repair method will begin to reappear once the court surface starts to experience cold temperatures.**

**We propose** hereby to furnish material and labor - complete in accordance with above specifications, for the sum of:

**As Stated Above** \_\_\_\_\_ dollars (\$ \_\_\_\_\_ )

Payment to be made as follows:

**Within 15 days of billing date.**

*All materials guaranteed as specified. All work to be completed in a workmanlike manner according to standard practices. All agreements contingent upon strikes, accidents, or delays beyond our control. Owner to carry fire, tornado, and any other necessary insurance. Our workers are covered by Workman's Compensation Insurance. Customer agrees to pay 1 1/2% per month (or 18% per annum) interest on sums overdue by 30 days or more and agrees to pay cost of collection and reasonable attorneys fees. This agreement shall be governed and*

Authorized  
Signature

Mike Verge, Representative

Note: This proposal may be withdrawn by us if not accepted within **90 days**

## Acceptance of Proposal

The above prices, specifications and conditions (back side) are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Date of Acceptance: \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

4-6

# Quality Fencing Residential & Commercial



(A Division of CCR Sports, Inc.)

# Proposal

P. O. Box 6 St. Johnsbury VT 05819

1-802-748-4378 1-800-237-6774

1-802-748-9974 FAX

www.vttennis.com

PROPOSAL SUBMITTED TO <b>Town of Hampden</b>		PHONE <b>207-862-6451</b>	FAX	DATE <b>6/1/2018</b>
SHELLEY ABBOTT STREET <b>P.O. Box 219 - 106 Western Ave.</b>		EMAIL recreation@hampdenmaine.gov	JOB <b>Basketball Crack Repair</b>	
CITY, STATE, AND ZIP CODE <b>Hampden, ME 04444</b>		18151	JOB LOCATION <b>Hampden, ME</b>	
			<b>Three (3) Basketball Courts</b>	

We hereby submit specifications and estimates to:

## Work to be completed: Three (3) Basketball Courts Crack Repair

- Clean & fill structural cracks with concrete fortified with E330 Acrylic Binder. Fill hairline cracks with **ELITE-Crack** rubberized liquid crack filler.
- Clean surface area with compressed air.
- Touch up repaired cracks with appropriate colors. Color to be Lt. Green and Dk. Green, with the understanding that the colors will not match perfectly.
- Touch up lines as needed in repaired areas only.

Price for above work a.- d. : \$4,395.00.

## Work to be completed: Two (2) Tennis Crack Repair

- Clean & fill structural cracks with concrete fortified with E330 Acrylic Binder. Fill hairline cracks with **ELITE-Crack** rubberized liquid crack filler.
- Clean surface area with compressed air.
- Touch up repaired cracks with appropriate colors. Color to be Lt. Green and Dk. Green, with the understanding that the colors will not match perfectly.
- Touch up lines as needed in repaired areas only.

Add \$3,651.00. to the pricing above.

Note: This price is good only if completed at the same time as Tennis court work above:

Note: Even though we use the most up to date materials available, cracks repaired with the standard repair method will begin to reappear once the court surface starts to experience cold temperatures.

We propose hereby to furnish material and labor - complete in accordance with above specifications, for the sum of:

As Stated Above \_\_\_\_\_ dollars (\$ \_\_\_\_\_)

Payment to be made as follows:

Within 15 days of billing date.

All materials guaranteed as specified. All work to be completed in a workmanlike manner according to standard practices. All agreements contingent upon strikes, accidents, or delays beyond our control. Owner to carry fire, tornado, and any other necessary insurance. Our workers are covered by Workman's Compensation Insurance. Customer agrees to pay 1.25% per month (or 18% per annum) interest on sums overdue by 30 days or more and agrees to pay cost of collection and reasonable attorneys fees. This agreement shall be governed and

Authorized  
Signature

Mike Verge, Representative

Note: This proposal may be withdrawn  
by us if not accepted within **90 days**

## Acceptance of Proposal

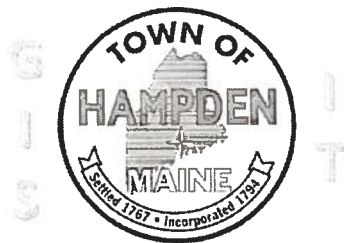
The above prices, specifications and conditions (back side) are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Date of Acceptance: \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_





4-C

# MEMO

**To:** Jim Chandler, Town Manager & Hampden Town Council  
**From:** Kyle Severance, GIS-IT Specialist  
**Date:** 06-14-18  
**Re:** Request to Use IT Computer Reserve Funds to Purchase Surface Pro Tablet for new Town Manager 03-711-00

**Message:**

Our new town manager has requested a tablet that can run Microsoft Office 365. The recommended solution is a Microsoft Surface Pro. Microsoft Office is much more compatible on a Surface than an Apple Ipad which is why I recommend the new device and repurposing existing Ipad. Please find the quote from CDW-G on the following page.

Requested authorization to purchase:

**\$1,415.85 for the purchase of a Surface Pro Tablet Computer from IT Computer Reserve 03-711-00**

I would be happy to answer any questions you may have. Thank you for your consideration,

Kyle Severance

# QUOTE CONFIRMATION



DEAR ,

Thank you for considering CDW•G for your computing needs. The details of your quote are below. [Click here](#) to convert your quote to an order.

QUOTE #	QUOTE DATE	QUOTE REFERENCE	CUSTOMER #	GRAND TOTAL
1BVK58H	6/14/2018	FOR NEW TOWN MANAGER	896923	\$1,415.85

## IMPORTANT - PLEASE READ

**Special Instructions:** Beginning of customer text:  
Order completion dependent upon  
council approval 6/18.  
End of customer text.

### Additional Information:

Cost Center: 03-0-0711

## QUOTE DETAILS

ITEM	QTY	CDW#	UNIT PRICE	EXT. PRICE
Microsoft Surface Pro LTE - 12.3" - Core i5 7300U - 8 GB RAM - 256 GB SSD Mfg. Part#: GWP-00001 UNSPSC: 43211509 Contract: Sourcewell Formerly NJPA 100614#CDW Tech Catalog (100614#CDW)	1	4784237	\$1,243.20	\$1,243.20
UAG Rugged Case for Surface Pro, Surface Pro 4, & Surface Pro LTE - Black - Mfg. Part#: UAG-SFPRO4-BLK-VP UNSPSC: 53121705 Contract: Sourcewell Formerly NJPA 100614#CDW Tech Catalog (100614#CDW)	1	3866218	\$65.05	\$65.05
Microsoft Surface Pro Type Cover (M1725) - keyboard - with trackpad, accelo Mfg. Part#: FMN-00001 UNSPSC: 43211706 Contract: Sourcewell Formerly NJPA 100614#CDW Tech Catalog (100614#CDW)	1	4634736	\$107.60	\$107.60

## PURCHASER BILLING INFO

**Billing Address:**  
TOWN OF HAMPDEN  
ACCTS PAYABLE  
106 WESTERN AVE  
HAMPDEN, ME 04444-1436  
**Phone:** (207) 862-4500  
**Payment Terms:**

## DELIVER TO

**Shipping Address:**  
TOWN OF HAMPDEN  
106 WESTERN AVE  
HAMPDEN, ME 04444  
**Phone:** (207) 862-4500  
**Shipping Method:** UPS Ground

**SUBTOTAL** \$1,415.85

**SHIPPING** \$0.00

**GRAND TOTAL** \$1,415.85

## Please remit payments to:

CDW Government  
75 Remittance Drive  
Suite 1515  
Chicago, IL 60675-1515

STATE OF MAINE  
PENOBSCOT, ss.

SUPERIOR COURT  
DKT. NO. AP-17-14

ACADIA HOSPITAL CORP.,

Plaintiff,

v.

TOWN OF HAMPDEN,

Defendant.

**ORDER ON RULE 80B APPEAL**

Before the Court is Plaintiff Acadia Hospital Corporation's M.R. Civ. P. 80B appeal of the Town of Hampden Board of Assessment Review's (the "Board") May 4, 2017 decision denying Acadia's appeal of a requested exemption from a service charge assessment. On August 17, 2017, the Court remanded the matter back to the Board because it found the record and decision to be too sparse for appellate review. The Board reconvened on October 24, 2017, and issued its revised decision on that same day. For the reasons stated below, the decision of the Board to deny the exemption from the service charge is **REVERSED**.

**BACKGROUND**

Acadia owns the property subject to this Rule 80B appeal; the property is located at 25 Mayo Road in Hampden. (R. 4.) Acadia leases the property to Sweetser, a Maine non-profit corporation. (R. 6.) The property is exempt from property taxes. (R. 6.) Sweetser provides "family-centered residential treatment services" for children. (R. 6.) The children who reside at the property reside there full time. (R. 7.) Every child who is a resident there attends Sweetser's private, special education school in Belfast. (R. 7.)

On October 20, 2016, the Hampden Town Manager informed Acadia that it would be imposing a service charge, pursuant to the Town's Service Charge Ordinance (the "Ordinance")

that was enacted pursuant to 36 M.R.S. § 652(1)(L),<sup>1</sup> for the 2016/2017 fiscal year on its property. (R. 4.) Acadia appealed that service charge in December 5, 2016. (R. 5.) On April 20, 2017, the Board heard Acadia's appeal of the imposition of the service charge. (R. 8.) The Board issued its first decision on May 4, 2017, which upheld the imposition of the service charge. (R. 8-9.)

Acadia then filed its Rule 80B appeal to this Court on June 5. This Court's Order remanding the case back to the Board was signed on August 17 and docketed on September 9. The Court determined that the record was too sparse to review and the Board's decision was inadequate because it did not address the issue the Board was faced with: whether the property was used for student housing. On October 24, the Board reconvened. (Supp. R. 5.) There was no new evidence presented at the hearing; instead, the parties debated how to best address the Court's concerns. (Supp. R. 15.) The Board issued its amended decision following the hearing on October 24 in which it again upheld the imposition of the service charge against Acadia. (Supp. R. 42-45.)

### STANDARD OF REVIEW

The Court reviews the Board's decision "for error of law, abuse of discretion or findings not supported by substantial evidence in the record." *Yates v. Town of Southwest Harbor*, 2001 ME 2, ¶ 10, 763 A.2d 1168 (quotation marks omitted). The party seeking to overturn the decision bears the burden of persuasion. *Sawyer Envtl. Recovery Facilities, Inc. v. Town of Hampden*, 2000 ME 179, ¶ 13, 760 A.2d 257. "The interpretation of a local ordinance is a question of law, and we review that determination de novo." *Logan v. City of Biddeford*, 2006 ME 102, ¶ 8, 905 A.2d 293 (quotation marks omitted).

The Court examines the ordinance for its plain meaning and construes its terms reasonably in light of the purposes and objective of the ordinance and its general structure. *Stewart v. Town*

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<sup>1</sup> The provision has since moved to 36 M.R.S. § 508. See P.L. 2007, ch. 627, § 12; see also L.D. 2154, § 12 & Summary, § 2, at 36 (123rd Legis. 2008).

of *Sedgwick*, 2002 ME 81, ¶ 6, 797 A.2d 27. However, if an ordinance is clear on its face, the Court will look no further than its plain meaning. *Rudolph v. Golick*, 2010 ME 106, ¶ 9, 8 A.3d 684. Local characterizations or fact-findings as to what meets ordinance standards may be accorded “substantial deference.” *Id.* ¶ 8.

### DISCUSSION

This case comes down to a plain meaning interpretation of Hampden’s Ordinance that was passed pursuant to the statutory authorization in Title 36. Acadia argues that the Board erred as a matter of law in its interpretation of the Ordinance, which led it to uphold the imposition of the service charge on Acadia. (Pl.’s Br. 14.) Hampden argues that the Board did no more than correctly interpret the Ordinance and properly deny Acadia’s appeal of the service charge. (Def.’s Br. 6.)

Hampden’s Ordinance was enacted pursuant to the statutory authority of 36 M.R.S. § 652(1)(L) (since moved as detailed in Footnote 1, *supra*). (R. 1.) The statute permits “[a] municipality [to] impose service charges on the owner of residential property, other than student housing or parsonages, that is totally exempt from taxation under section 652 and that is used to provide rental income,” and further states that “[m]unicipalities shall adopt any ordinances necessary to carry out the provisions of this section.” 36 M.R.S. § 508(1), (3). In turn, Hampden enacted the Ordinance that states as follows: “The service charge shall be levied by the municipal officers against all residential property owned by an organization or institution if the property is otherwise totally exempt from property taxation and is used to provide rental income. The service charge shall not apply to student housing or parsonages.” (R. 1.) The Court concludes that the Ordinance is clear on its face and needs to look no further than the plain meaning.

The Ordinance (by way of the statutory authorization) essentially breaks down into five elements: (1) the property must be residential property; (2) it must be owned by an organization or institution; (3) the property must be otherwise totally exempt from property taxation; (4) the property must be used to provide rental income; and (5) even if the first four elements are met, the service charge may not be imposed when the property is used for student housing or a parsonage. The Board made all the necessary factual findings to fit a plain meaning interpretation of the Ordinance, but then construed it beyond its plain meaning to find the service charge applicable. By way of illustration, the Board found that (1) the property is residential property (Supp. R. 43-44, Findings of Fact 5, 14.); (2) the property is owned by an organization or institution (Supp. R. 43, Finding of Fact 1.); (3) the property is otherwise totally exempt from property taxation (Supp. R. 43, Finding of Fact 7.); (4) the property is used to provide rental income (Supp. R. 43, Findings of Fact 4, 11.); and (5) the residents who live at the property are students who attend the Sweetser School in Belfast. (Supp. R. 44, Findings of Fact 15-16.).

However, the Board then went on to interpret the “student housing” exception “to mean housing that is *incidental to and necessitated by a person's chief occupation*, specifically being a student . . . .” (Supp. R. 45, Conclusion 6 (emphasis added).) The plain meaning of “student housing” is broader and does not indicate such a constrained definition. “Student housing” means exactly what it appears to mean: it evinces an image of somewhere where someone, who is a student, lives. Indeed, the dictionary definitions of “student” and “housing” support this conclusion.<sup>2</sup> A “student” is defined as “[o]ne who attends a school, college, or university.” *The*

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<sup>2</sup> The use of dictionaries to determine the plain meaning of undefined terms is common practice. *See, e.g., Apex Custom Lease Corp. v. State Tax Assessor*, 677 A.2d 530, 533 (Me. 1996) (“We often rely on the definitions provided in dictionaries in making this determination.”); *Rodriguez v. Town of Moose River*, 2007 ME 68, ¶¶ 32 & 35 n.5, 922 A.2d 484 (looking to the dictionary definitions of “public” and “public building”); *State Tax Assessor v. MCI Communs. Servs.*, 2017 ME 119, ¶ 14 & n.10, 164 A.3d 952 (looking to the dictionary definitions of “sale” and “price” to determine the plain meaning of “sale price”).

*American Heritage Dictionary* 1208 (1985). “Housing” is defined as “[r]esidences or dwelling places for people.” *The American Heritage Dictionary* 625 (1985). Thus, it logically follows that “student housing” means a residence for those who attend school, which is exactly what children here, who reside at the Sweetser facility and attend the Sweetser School in Belfast, do. The children also receive mental health treatment while they are at the Sweetser facility in Hampden, but that does not negate the fact that they live at that facility and attend school as part of their treatment. The Court can discern no valid reason why one leasing tax-exempt residential property to a nonprofit that provides the narrower form of student housing would be entitled to the service charge exemption, but one leasing tax-exempt residential property to a nonprofit that provides the broader form of student housing that includes mental health treatment is not. Accordingly, the Board erred in interpreting the “student housing” exception so narrowly when its plain meaning is much broader.

### CONCLUSION

The Court concludes that the Board erred as a matter of law in its interpretation of the Hampden Service Charge Ordinance, namely its overly narrow definition of “student housing” that is not mandated by the plain meaning of the Ordinance (by way of the statutory authorization in Title 36). The Board made all the necessary factual findings to meet a plain meaning reading of the Ordinance, thus the Court reverses the decision of the Board and enters judgment in favor of Acadia.

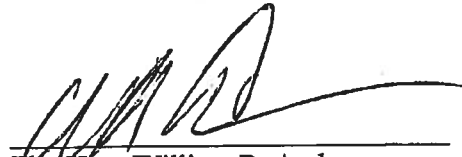
The entry is:

1. The Town of Hampden Board of Assessment Review’s October 24, 2017 decision denying Acadia Hospital Corporation’s appeal of a requested exemption from the October 20, 2016 service charge assessment is **REVERSED**, and judgment is entered in favor of Acadia Hospital Corporation.

2. The Clerk is directed to incorporate this Order into the docket by reference pursuant to M.R. Civ. P. 79(a).

Dated: \_\_\_\_\_

5/31/18



\_\_\_\_\_  
The Hon. William R. Anderson  
Justice, Maine Superior Court



## ACADIA V. HAMPDEN

The property is leased to sweetser so it is residential property (assuming residential means something like - for living in and not for business or occupation), it is tax exempt because it is owned by Acadia, and it is used to provide rental income to acadia.

Therefore, the only issue is whether it is used for student housing and if so, they can't collect the fee. This is a residential treatment facility in which the kids being treated are bussed to Belfast for school and otherwise stay primarily at the facility.

I don't see any detail on the record about this- do they eat there, there must be staff there including overnight staff, what about vacations and summer vacation- do they still stay there? Are any services, including counseling occur on site?

If one were to view "student housing" broadly or if ambiguities were construed against the tax assessing entity, then Acadia wins, otherwise perhaps not.

## FINANCE & ADMINISTRATION COMMITTEE MEETING

Monday, June 4th, 2018

### MINUTES – DRAFT

Hampden Town Office

#### Attending:

*Councilor Terry McAvoy, Chair  
Mayor Ivan McPike  
Councilor Mark Cormier  
Councilor Dennis Marble  
Councilor David Ryder  
Councilor Stephen Wilde  
Town Manager Angus Jennings  
Town Attorney Ed Bearor*

*Incoming Manager Jim Chandler  
Town Clerk Paula Scott  
DPW Director Sean Currier  
Rec Director Shelley Abbott  
Bangor Asst. City Mgr Mike Crooker  
Resident Walt Cupples  
Resident Marge Lawrence  
Residents*

*Chairman McAvoy called the meeting to order at 6:00 p.m.*

#### 1. Meeting Minutes

- a. May 21st, 2018 – There was a motion by Councilor Marble seconded by Mayor McPike to approve the minutes. Approved 6-0.*

- 2. Review & Sign Warrants – Warrants were presented and signed. Mayor McPike asked about expenditures to Nicklebeth Turf on warrants #92 and #94 totaling \$16,220 and wanted to ensure that these expenses were properly budgeted in the proposed FY19 budget, noting that the total expenses exceed the budgeted amount for grub prevention in the Buildings & Grounds budget. Manager Jennings verified that the costs had been properly budgeted for FY19, and that these invoices had been paid out of the Buildings & Grounds budget and the Rec Budget.*

- 3. Unfinished Business – None.*

#### 4. New Business

- a. Recommend Council authorization to expend funds from the Personnel Reserve Account (3-733-00) for the purpose of paying accrued vacation and a portion of accrued sick time to a departing employee – Motion by Chairman McAvoy seconded by Councilor Marble to recommend Council authorization to expend \$8,735.21 for the purpose of paying accrued vacation and a portion*

*of accrued sick time to departing employee Angus Jennings in accordance with the Town personnel policy. Motion passed 6-0.*

- b. Recommend award of the concrete work for the DPW Salt Building bid to C W Martin Concrete** – *requested by DPW Director Currier – Motion by Mayor McPike seconded by Councilor Marble to recommend Council award of the bid for concrete work at the DPW Salt Shed to C.W. Martin Concrete, with an amount not to exceed \$40,400. Motion passed 6-0.*
- c. Request for Council authorization for the expenditure of an amount not to exceed \$40,400 from the Solid Waste Reserve Account (3-777-00) for concrete work for the new DPW Salt Building** – *requested by DPW Director Currier – Manager Jennings advised that this reserve funding had been previously authorized by the Council in October 2017, so no vote is needed. The item was passed over.*
- d. Recommend award of the carpentry work for the DPW Salt Building bid to Complete Construction** – *requested by DPW Director Currier – Motion by Mayor McPike seconded by Councilor Marble to recommend Council award of the bid for carpentry work at the DPW Salt Shed to Complete Construction, with an amount not to exceed \$35,000. Motion passed 6-0.*
- e. Request for Council authorization for the expenditure of an amount not to exceed \$35,000 from the Solid Waste Reserve Account (3-777-00) for carpentry work for the new DPW Salt Building** – *requested by DPW Director Currier – Manager Jennings advised that this reserve funding had been previously authorized by the Council in October 2017, so no vote is needed. The item was passed over.*
- f. Committee review and discussion regarding the possible waiver and consent agreement with Waste Management to allow delivery of MSW to PERC for a waiver fee** – *There was discussion of the terms recently approved by the MRC Board whereby communities may choose to pay a waiver fee in order to send waste to PERC rather than to landfill during the “bridge period” prior to full operations at Fiberight. It was reported that, with the waiver fee, the per ton cost would go to \$120/ton instead of the contracted cost of \$70/ton. The Committee agreed this did not make sense to pursue. Councilor Marble said that the consequence of the extended bridge period is anti-environmental, due to landfilling, and said he hopes that MRC and Fiberight would minimize what appears to be an*

*irresponsible method of waste disposal.*

- g. Recommend Council waiver of the residency requirement for new Town Manager James Chandler** – *Motion by Councilor Marble seconded by Councilor Wilde to recommend Council waiver of the residency requirement for new Town Manager James Chandler. Mayor McPike asked what kind of timeframe? Incoming Manager Chandler said it may be next spring. Councilor Wilde said that this requirement in the Town Charter seems kind of antiquated. Motion passed 6-0.*
- h. Recommend Council referral of proposed FY19 budget to public hearing for June 18th** – *Manager Jennings said that the Council will be asked to refer a proposed budget to public hearing, and presented a series of slides summarizing the budget process to date, major topics discussed during the budget process, factors affecting FY19 costs and revenues, and summarized recommended changes he asked the Council to incorporate prior to referral. These changes included increases and decreases in various personnel line items for Administration, Police, Fire and Recreation with a net impact of adding \$9,576 to the budget; these changes were due to updates to the personnel budgeting workbook, and included applying 2% COLA to public safety. He also recommended funding The Bus for the full year at the amount initially proposed of \$106,352. He noted that a reduced local share of Bus costs may result from a process now underway in Bangor, but because any changes in the funding allocation are not yet official it is recommended to budget for the original amount. He also reported that a decision on the Service Fee litigation had been received today and was not favorable to the town, so he is recommending a reduction of \$4,430 in budgeted FY19 Service Fee revenues.*

*Councilor Ryder asked about applying COLA at 2% across the board, not just union, and Manager Jennings advised this would add about \$17,000 to the budget. Chairman McAvoy said this would be more equitable, and Councilor Marble said this would avoid staff morale issues if all parts of the organization receive the same COLA. Mayor McPike agreed. Councilor Cormier said that union members pay dues whereas non-union employees do not. There was a call for a vote and the recommendation to apply 2% COLA across the board passed 5-1 with Councilor Cormier opposed.*

*There was discussion of Schoolhouse Lane, which is proposed for complete reconstruction in the draft budget. Councilor Wilde asked if the cost of paving could be broken out so that this could be either reduced from the project budget (with paving costs coming out of the*

*paving budget for FY19) or reduced from the paving budget (with the costs paid from the street construction budget). Manager Jennings asked DPW Director to prepare an estimate of the road paving costs for inclusion in the June 18 meeting packet.*

*Resident Marge Lawrence spoke in favor of the bus, saying that it helps make Hampden a livable community. Resident Walt Cupples of 213 Canaan Road said he's lived in Hampden 30 years and it is the best of both worlds, between Hampden and Bangor. He said the bus is a critical link and we would like to see service expanded in the future, but for the current budget process would like to keep the current level of service. Marge Lawrence said that people live here who couldn't live in Hampden without the bus. People also need it if injured, and as they get older. She said it's a needed service.*

*Councilor Ryder asked about the estimated mil rate impact of the proposed budget. Manager Jennings said that an estimate would be prepared for inclusion in the June 18 meeting materials.*

*There was a motion to refer the proposed budget to public hearing, including the recommended changes discussed tonight (including funding for the bus, the 2% COLA, and the other revisions to various personnel lines). The motion passed 4-2 with Councilors Cormier and Wilde opposed.*

**5. Public Comment – None.**

- 6. Committee Member Comments** – *Councilor Wilde said this has been a really tough budget season. Proposed school, County, water rate increases have contributed to a proposed \$1.3 million increase, which could have been even higher. He said that the Councilors will still be looking closely at it over the next couple of weeks.*

**7. Adjournment**

*There being no further business, the meeting was adjourned at 6:56 PM.*

Respectfully submitted –  
Angus Jennings, Town Manager

STATE OF MAINE  
PENOBSCOT, ss.

SUPERIOR COURT  
DKT. NO. AP-17-14

ACADIA HOSPITAL CORP.,

Plaintiff,

v.

TOWN OF HAMPDEN,

Defendant.

**ORDER ON RULE 80B APPEAL**

Before the Court is Plaintiff Acadia Hospital Corporation's M.R. Civ. P. 80B appeal of the Town of Hampden Board of Assessment Review's (the "Board") May 4, 2017 decision denying Acadia's appeal of a requested exemption from a service charge assessment. On August 17, 2017, the Court remanded the matter back to the Board because it found the record and decision to be too sparse for appellate review. The Board reconvened on October 24, 2017, and issued its revised decision on that same day. For the reasons stated below, the decision of the Board to deny the exemption from the service charge is **REVERSED**.

**BACKGROUND**

Acadia owns the property subject to this Rule 80B appeal; the property is located at 25 Mayo Road in Hampden. (R. 4.) Acadia leases the property to Sweetser, a Maine non-profit corporation. (R. 6.) The property is exempt from property taxes. (R. 6.) Sweetser provides "family-centered residential treatment services" for children. (R. 6.) The children who reside at the property reside there full time. (R. 7.) Every child who is a resident there attends Sweetser's private, special education school in Belfast. (R. 7.)

On October 20, 2016, the Hampden Town Manager informed Acadia that it would be imposing a service charge, pursuant to the Town's Service Charge Ordinance (the "Ordinance")

that was enacted pursuant to 36 M.R.S. § 652(1)(L),<sup>1</sup> for the 2016/2017 fiscal year on its property. (R. 4.) Acadia appealed that service charge in December 5, 2016. (R. 5.) On April 20, 2017, the Board heard Acadia's appeal of the imposition of the service charge. (R. 8.) The Board issued its first decision on May 4, 2017, which upheld the imposition of the service charge. (R. 8-9.)

Acadia then filed its Rule 80B appeal to this Court on June 5. This Court's Order remanding the case back to the Board was signed on August 17 and docketed on September 9. The Court determined that the record was too sparse to review and the Board's decision was inadequate because it did not address the issue the Board was faced with: whether the property was used for student housing. On October 24, the Board reconvened. (Supp. R. 5.) There was no new evidence presented at the hearing; instead, the parties debated how to best address the Court's concerns. (Supp. R. 15.) The Board issued its amended decision following the hearing on October 24 in which it again upheld the imposition of the service charge against Acadia. (Supp. R. 42-45.)

### STANDARD OF REVIEW

The Court reviews the Board's decision "for error of law, abuse of discretion or findings not supported by substantial evidence in the record." *Yates v. Town of Southwest Harbor*, 2001 ME 2, ¶ 10, 763 A.2d 1168 (quotation marks omitted). The party seeking to overturn the decision bears the burden of persuasion. *Sawyer Envtl. Recovery Facilities, Inc. v. Town of Hampden*, 2000 ME 179, ¶ 13, 760 A.2d 257. "The interpretation of a local ordinance is a question of law, and we review that determination de novo." *Logan v. City of Biddeford*, 2006 ME 102, ¶ 8, 905 A.2d 293 (quotation marks omitted).

The Court examines the ordinance for its plain meaning and construes its terms reasonably in light of the purposes and objective of the ordinance and its general structure. *Stewart v. Town*

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<sup>1</sup> The provision has since moved to 36 M.R.S. § 508. See P.L. 2007, ch. 627, § 12; see also L.D. 2154, § 12 & Summary, § 2, at 36 (123rd Legis. 2008).

of *Sedgwick*, 2002 ME 81, ¶ 6, 797 A.2d 27. However, if an ordinance is clear on its face, the Court will look no further than its plain meaning. *Rudolph v. Golick*, 2010 ME 106, ¶ 9, 8 A.3d 684. Local characterizations or fact-findings as to what meets ordinance standards may be accorded “substantial deference.” *Id.* ¶ 8.

### DISCUSSION

This case comes down to a plain meaning interpretation of Hampden’s Ordinance that was passed pursuant to the statutory authorization in Title 36. Acadia argues that the Board erred as a matter of law in its interpretation of the Ordinance, which led it to uphold the imposition of the service charge on Acadia. (Pl.’s Br. 14.) Hampden argues that the Board did no more than correctly interpret the Ordinance and properly deny Acadia’s appeal of the service charge. (Def.’s Br. 6.)

Hampden’s Ordinance was enacted pursuant to the statutory authority of 36 M.R.S. § 652(1)(L) (since moved as detailed in Footnote 1, *supra*). (R. 1.) The statute permits “[a] municipality [to] impose service charges on the owner of residential property, other than student housing or parsonages, that is totally exempt from taxation under section 652 and that is used to provide rental income,” and further states that “[m]unicipalities shall adopt any ordinances necessary to carry out the provisions of this section.” 36 M.R.S. § 508(1), (3). In turn, Hampden enacted the Ordinance that states as follows: “The service charge shall be levied by the municipal officers against all residential property owned by an organization or institution if the property is otherwise totally exempt from property taxation and is used to provide rental income. The service charge shall not apply to student housing or parsonages.” (R. 1.) The Court concludes that the Ordinance is clear on its face and needs to look no further than the plain meaning.



The Ordinance (by way of the statutory authorization) essentially breaks down into five elements: (1) the property must be residential property; (2) it must be owned by an organization or institution; (3) the property must be otherwise totally exempt from property taxation; (4) the property must be used to provide rental income; and (5) even if the first four elements are met, the service charge may not be imposed when the property is used for student housing or a parsonage. The Board made all the necessary factual findings to fit a plain meaning interpretation of the Ordinance, but then construed it beyond its plain meaning to find the service charge applicable. By way of illustration, the Board found that (1) the property is residential property (Supp. R. 43-44, Findings of Fact 5, 14.); (2) the property is owned by an organization or institution (Supp. R. 43, Finding of Fact 1.); (3) the property is otherwise totally exempt from property taxation (Supp. R. 43, Finding of Fact 7.); (4) the property is used to provide rental income (Supp. R. 43, Findings of Fact 4, 11.); and (5) the residents who live at the property are students who attend the Sweetser School in Belfast. (Supp. R. 44, Findings of Fact 15-16.).

However, the Board then went on to interpret the “student housing” exception “to mean housing that is *incidental to and necessitated by a person's chief occupation*, specifically being a student . . . .” (Supp. R. 45, Conclusion 6 (emphasis added).) The plain meaning of “student housing” is broader and does not indicate such a constrained definition. “Student housing” means exactly what it appears to mean: it evinces an image of somewhere where someone, who is a student, lives. Indeed, the dictionary definitions of “student” and “housing” support this conclusion.<sup>2</sup> A “student” is defined as “[o]ne who attends a school, college, or university.” *The*

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<sup>2</sup> The use of dictionaries to determine the plain meaning of undefined terms is common practice. See, e.g., *Apex Custom Lease Corp. v. State Tax Assessor*, 677 A.2d 530, 533 (Me. 1996) (“We often rely on the definitions provided in dictionaries in making this determination.”); *Rodriguez v. Town of Moose River*, 2007 ME 68, ¶¶ 32 & 35 n.5, 922 A.2d 484 (looking to the dictionary definitions of “public” and “public building”); *State Tax Assessor v. MCI Communs. Servs.*, 2017 ME 119, ¶ 14 & n.10, 164 A.3d 952 (looking to the dictionary definitions of “sale” and “price” to determine the plain meaning of “sale price”).

*American Heritage Dictionary* 1208 (1985). “Housing” is defined as “[r]esidences or dwelling places for people.” *The American Heritage Dictionary* 625 (1985). Thus, it logically follows that “student housing” means a residence for those who attend school, which is exactly what children here, who reside at the Sweetser facility and attend the Sweetser School in Belfast, do. The children also receive mental health treatment while they are at the Sweetser facility in Hampden, but that does not negate the fact that they live at that facility and attend school as part of their treatment. The Court can discern no valid reason why one leasing tax-exempt residential property to a nonprofit that provides the narrower form of student housing would be entitled to the service charge exemption, but one leasing tax-exempt residential property to a nonprofit that provides the broader form of student housing that includes mental health treatment is not. Accordingly, the Board erred in interpreting the “student housing” exception so narrowly when its plain meaning is much broader.

### CONCLUSION

The Court concludes that the Board erred as a matter of law in its interpretation of the Hampden Service Charge Ordinance, namely its overly narrow definition of “student housing” that is not mandated by the plain meaning of the Ordinance (by way of the statutory authorization in Title 36). The Board made all the necessary factual findings to meet a plain meaning reading of the Ordinance, thus the Court reverses the decision of the Board and enters judgment in favor of Acadia.

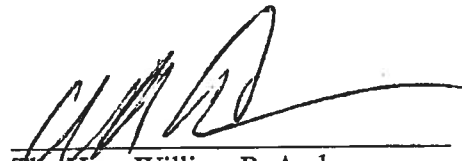
The entry is:

1. The Town of Hampden Board of Assessment Review’s October 24, 2017 decision denying Acadia Hospital Corporation’s appeal of a requested exemption from the October 20, 2016 service charge assessment is **REVERSED**, and judgment is entered in favor of Acadia Hospital Corporation.

2. The Clerk is directed to incorporate this Order into the docket by reference pursuant to M.R. Civ. P. 79(a).

Dated: \_\_\_\_\_

5/31/18

  
\_\_\_\_\_  
The Hon. William R. Anderson  
Justice, Maine Superior Court

ACADIA V. HAMPDEN

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